

DANIEL G. BOGDEN
United States Attorney
STEVEN W. MYHRE
NICHOLAS D. DICKINSON
Assistant United States Attorneys
NADIA J. AHMED
ERIN M. CREEGAN
Special Assistant United States Attorneys
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101
PHONE: (702) 388-6336
FAX: (702) 388-6698

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER T. SANTILLI,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO DEFENDANT
SANTILLI'S MOTION TO
REVIEW DETENTION ORDER
(C.R. 324)**

The United States, by and through the undersigned, respectfully submits its Response in Opposition to Defendant Peter T. Santilli's ("Santilli's") Motion to Review Detention Order (C.R. 324) (hereinafter "Motion" or "Motion to Revoke"). In his Motion, Santilli asks this Court to revoke United States Magistrate Judge Papak's Detention Order of March 11, 2016, the order issuing from the District of Oregon following a fully-adjudicated detention hearing and reflecting that Court's finding that Santilli presented both a danger to the community and a risk of nonappearance at future proceedings. C.R. 142-1; attached at Exhibit "Ex." 1 (hereinafter also referred to as "Detention Order").

1 Having been charged with four counts of Section 924(c) violations, Santilli
2 submits nothing in this Motion that rebuts the presumption of detention that
3 attaches under the Bail Reform Act – a presumption that Magistrate Judge Papak
4 found and applied appropriately. Additionally, the government proffered
5 overwhelming evidence at the detention hearing, showing that Santilli presented
6 both a danger to the community and a risk of flight under the Section 3142(g)
7 factors. Santilli's Motion proffers no evidence to refute that showing. Accordingly,
8 the Motion to Revoke should be denied.

9 BACKGROUND

10 On February 17, 2016, Santilli was charged by Indictment in Nevada with
11 numerous crimes of violence in connection with his alleged participation in a
12 conspiracy to use force, violence and firearms to assault and extort federal officers
13 on April 12, 2014, near Bunkerville, Nevada. The charges included assault with a
14 deadly weapon on a federal law enforcement officer, threatening a federal law
15 enforcement officer, obstruction of justice, extortion of federal officers, and use and
16 brandish a firearm in relation to a crime of violence, and conspiracy to commit
17 same, all in violation of Title 18, United States Code, Sections 111(a)(1) and (b),
18 115, 924(c), 1503, 1951 and 371, respectively. A warrant for Santilli's arrest
19 issued from the Indictment.
20

21 Before the return of the Nevada Indictment, which joined Santilli and four
22 (4) other co-defendants, Santilli had been charged by Indictment in the District of
23 Oregon, for felony violations arising from his alleged involvement in an armed
24 takeover of the Malheur National Wildlife Refuge in Harney County, Oregon, in

1 and around January 2016. Arrested on January 27, 2016, Santilli had been
2 detained in Oregon pending trial on those charges at the time of the Nevada
3 Indictment.

4 On February 29, 2016, the presiding Judge in the Oregon case, United
5 States District Judge Anna Brown, considered the Oregon detention order and
6 released Santilli on terms and conditions which included GPS monitoring and
7 release to a community corrections center when space became available. In so
8 ordering, Judge Brown stated that she did not take into account the facts and
9 circumstances surrounding the Nevada Indictment. Government Opening
10 Memorandum, C.R. 142-3; attached at Ex. 2 at 2.

11 Following Judge Brown's ruling, Santilli was held in custody in Oregon on
12 the Nevada Indictment and arrest warrant. His initial appearance and detention
13 hearing on the Nevada Indictment was scheduled in Oregon for March 1, 2016.
14 That hearing was continued to March 7. In the interim, and on March 3, 2016,
15 the Superseding Indictment in this case was returned in the District of Nevada,
16 joining Santilli with 14 additional defendants, bringing the total number of joined
17 defendants to 19.

18 The March 7 detention hearing in Oregon was continued a second time to
19 March 11, 2016, and was presided over by United States Magistrate Judge Paul
20 Papak. At that hearing, the government and Santilli each proffered evidence and
21 presented argument in support of their respective positions. *See* Transcript of
22 March 11 Hearing, Exhibit "Ex." 3. Following the hearing, Judge Papak ordered
23 Santilli detained, finding that no condition or combination of conditions could
24

1 reasonably assure the safety of the community or assure the appearance of the
2 defendant at future proceedings. Ex. 1. Judge Papak later entered a transfer and
3 commitment Order, transferring Santilli to Nevada to stand trial on the Nevada
4 Superseding Indictment. C.R. 142-10.

5 However, before Santilli was transported to Nevada and on March 22, 2016,
6 Judge Brown held a hearing to determine whether to transfer five (5) of Santilli's
7 co-defendants to Nevada pursuant to writs of habeas corpus *ad prosequendum*
8 that issued from the Nevada Superseding Indictment, those 5 having been
9 charged together with Santilli in Oregon (for the Malheur takeover) and Nevada
10 (for the assault and extortion), all of them being detained in Oregon. Following
11 the hearing, Judge Brown entered an order transferring Santilli's five co-
12 defendants to Nevada on the writs. The Court's Order further directed the U.S.
13 Marshal's Service to return Santilli and six other co-defendants from Nevada to
14 the District of Oregon on or before April 25, 2016, in order that they might
15 prepare for and stand trial in Oregon on the Oregon Indictment.
16

17 Pursuant to Judge Brown's Order, Santilli was transferred to the District of
18 Nevada on April 13, 2016, and made his initial appearance on April 15, 2016.
19 Santilli later sought, and received, a modified order of transport keeping him in
20 Nevada until no later than May 19, 2016, to afford him time to prepare for his
21 detention hearing.

22 Santilli filed this Motion on April 27, 2016, seeking to revoke Magistrate
23 Judge Papak's Detention Order. For the reasons explained below, the Motion
24 should be denied.

LEGAL STANDARD

This Court reviews Judge Papak's Detention Order *de novo*. *United States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990); *see also United States v. King*, 849 F.2d 485, 491 (11th Cir. 1988); *United States v. Maull*, 773 F.2d 1479, 1481 (8th Cir. 1985) (*en banc*); *United States v. Leon*, 766 F.2d 77, 80 (2d Cir. 1985). Accordingly, the Court may review the evidence presented to the Magistrate Judge and make its own independent determination. *Koenig*, 912 F.2d at 1193 ("clearly, the district court is not required to start over in every case, and proceed as if the magistrate's decision and findings did not exist..."). Or, it may take additional evidence and consider further argument. *Id.*

Under the Bail Reform Act, a charge of a violation of Title 18, United States Code, Section 924(c), provides a presumption, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the defendant and the safety of the community. *See* 18 U.S.C. § 3142(e)(3)(B). The presumption "remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g)." *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (*quoting United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)).

The government may proceed in a detention hearing by proffer or hearsay, as a defendant has no right to cross-examine adverse witnesses who have not been called to testify. *See United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986). "Neither the Ninth Circuit nor Congress intends the detention hearing to serve as a mini-trial on the ultimate question of guilt." *United States v. Bibbs*, 488 F. Supp.

1 925, 926 (N.D.Cal., 2007) (citing *Winsor* and overruling the objection to the
2 government's proffer at detention hearing). Accordingly, the Court may "rely upon
3 investigatory descriptions of evidence (and similar hearsay) where the judicial
4 officer reasonably concludes that those descriptions, reports, and similar evidence,
5 in the particular circumstances of the hearing, are reliable." *United States v.*
6 *Acevedo-Ramos*, 755 F.2d 203, 207 (9th Cir. 1985).

7 8 **ARGUMENT**

9 Given the *de novo* nature of the Court's review, the government adopts and
10 incorporates by reference all of the evidence proffered and arguments advanced in
11 the Oregon detention hearing. Specifically, it references the "Government's
12 Memorandum In Support of Its Motion for Pretrial Detention" (hereinafter
13 "Opening Memorandum") (C.R. 142-2) (Attached at Exhibit 2), and the transcript of
14 the detention proceedings in Oregon (Transcript "Tr." at Ex. 3).

15 As demonstrated in its Opening Memorandum, the government showed
16 that Santilli failed to rebut the presumption of detention that attaches in this case
17 under the Bail Reform Act. The Superseding Indictment and the evidence
18 proffered at his detention hearing show that he was a key player in the build-up,
19 organization and execution of an unprecedented, massive armed assault against
20 federal law enforcement officers near Bunkerville, Nevada, on April 12, 2014.

21 As set out in the Superseding Criminal Indictment, in which he is a named
22 as one of the principle organizers and leaders of a criminal enterprise, Santilli is
23 charged with knowingly joining a criminal conspiracy to threaten and use force
24

1 and violence against law enforcement officers in order to extort about 400 head of
2 cattle from their care and custody. Among other things, his prominent role in the
3 conspiracy included:

4 (1) recruiting gunmen to come to Bundy Ranch to show force against law
5 enforcement officers, culminating in the assault on April 12;

6 (2) threatening violence to law enforcement officers for doing their jobs;

7 (3) leading an assault on a BLM convoy engaged in impoundment
8 operations on April 9;

9 (4) conducting reconnaissance of hotels where BLM officers and
10 employees were staying during impoundment operations;

11 (5) threatening the BLM SAC on April 11 and delivering an ultimatum
12 to leave the Impoundment Site;

13 (6) inciting Followers and gunmen during Bundy's Rally on the morning of
14 April 12, moving to the Impoundment Site upon Bundy's command at the Rally, and
15 participating in assault on the Impoundment Site on April 12 and the threats of
16 force and violence against law enforcement officers.
17

18 As set out in the Opening Memorandum, the evidence against Santilli is
19 overwhelming. Photos, video/audio recordings, social media postings, admissions
20 and witness testimony all chronicle Santilli's involvement from as early as April 6,
21 2014 – when he told co-conspirator Blaine Cooper that he was going to have Cliven
22 Bundy on his show to “drum up support” and then told Cooper “let's f---ing go. You
23 ready? Get a team of militia members.” He was a major player in bringing together
24 the forces that assembled against the BLM at Bundy Ranch, participating directly

1 in the criminal conduct on the ground, leading to and culminating in the assault
2 and extortion, to include:

- 3 • April 8: Using his blog to threaten violence to law enforcement officers and
4 broadcast a call-to-arms to militia, specifically calling for people with guns
to go to Nevada to “kick out the feds.”
- 5 • April 9: Leading an ambush of a BLM convoy as it was leaving the field
6 after conducting impoundment operations.
- 7 • April 9: Making numerous threats of force and violence against law
8 enforcement officers and issuing at least three calls-to-arms to gunmen,
calling for an armed confrontation with law enforcement officers.
- 9 • April 10 and 11: Conducting reconnaissance of hotels where BLM employees
10 were staying while they were conducting impoundment operations.
- 11 • April 11: Threatening the SAC of the Impoundment with force and violence
12 and issued an ultimatum to him, telling him there was going to be a
confrontation and to leave before it occurred or else face arrest or injury.
- 13 • April 12: Inciting and encouraging others in the crowd at the Rally that
14 preceded the assault, calling for the arrest of the Sheriff for being
“unconstitutional.”
- 15 • April 12: Moving from the Rally Site to the Impoundment Site for the
16 purpose of forcing the BLM to release the impounded cattle; threatening law
enforcement officers with force and violence.

17 Ex. 2 at 24 – 36.

18 Santilli’s involvement in the conspiracy extended well beyond April 12,
19 including his November 2015 voicemail message to the SAC, threatening that “his
20 listeners will respond to Bundy Ranch if [the SAC] go[es] anywhere near it;” (Ex. 3
21 at 17-18) and his numerous podcasts where he vows to “continue the fight day and
22 night” and proclaims Bundy Ranch as the model for the future. And, obviously,
23 Santilli involved himself in the Malheur occupation leading to his charges in
24 Oregon, all occurring after his alleged involvement in the assault and extortion at

1 Bundy Ranch. All of this shows that Santilli is on a mission from which he will not
2 be deterred – except by continued detention.

3 Nothing in Santilli’s Motion refutes any of this. Instead, he rolls out a string
4 of irrelevancies.

5 First, he contends that his conduct is protected by the First Amendment
6 because he supposedly was a member of the media covering the dispute between
7 the Bundy family and the government. Mot. at 5. Santilli is just wrong – both on
8 the facts and the law.

9 There is nothing legally relevant about Santilli’s status as a supposed
10 member of the media. Members of the media – self-proclaimed or not – are no
11 more insulated from criminal prosecution than non-members when their words are
12 used to commit crimes. Here, among other things, Santilli is charged with using
13 words to commit the crimes of threatening force and violence against federal law
14 enforcement officers and inciting, encouraging, and aiding and abetting others to
15 use guns and other force and violence against law enforcement officers. Neither
16 the First Amendment nor one’s status as member of the media bars prosecution for
17 those crimes. *See United States v. Freeman*, 761 F.2d 549, 551 (9th Cir. 1985) (the
18 First Amendment does not act as a bar to prosecution for federal crimes). Thus,
19 there is nothing about Santilli’s self-proclaimed status here that magically (or
20 legally) gives him a “get out of jail card” at a detention hearing.

22 Further, as shown at the detention hearing, Santilli was not “covering the
23 dispute between the Bundy family and [the government]” – he was a direct
24 participant in the conspiracy to assault and extort. As Magistrate Judge Papak

1 stated at the hearing: “[] you can’t immunize your own conduct simply by later
2 reporting on it.” Ex. 3 at 49.

3 Second, Santilli rolls out the trope that his prosecution will have a “chilling
4 effect on the media.” Aside from the fact that he presents no evidence of that and
5 cannot, he fails to explain how any of that is relevant to any issue regarding
6 detention. The Superseding Indictment charges Santilli with committing federal
7 crimes of violence – not with being in the media. Whether his prosecution chills or
8 doesn’t chill others is completely irrelevant to whether Santilli presents a danger to
9 the community or is a risk of non-appearance based on his conduct.

10 Lastly, Santilli contends that he cannot view his video and audio podcasts
11 while in pretrial detention and should, therefore, be released. Again, whether he
12 can or cannot watch his videos does nothing to address whether he presents a
13 danger to the community.
14
15
16
17
18
19
20
21
22
23
24

1 **WHEREFORE**, for all the foregoing reasons, the Court should deny the
2 Motion and enter an Order continuing Santilli's pretrial detention.

3 DATED this 3rd day of May, 2016.

4
5 Respectfully,

6 DANIEL G. BOGDEN
7 United States Attorney

8 *//s//*

9 _____
10 STEVEN W. MYHRE
11 NICHOLAS D. DICKINSON
12 Assistant United States Attorneys
13 NADIA J. AHMED
14 ERIN M. CREEGAN
15 Special Assistant United States Attorneys

16
17 Attorneys for the United States
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT SANTILLI'S MOTION TO REVIEW DETENTION ORDER** was served upon counsel of record, via Electronic Case Filing (ECF).

Dated this 3rd day of May, 2016.

/s/ Steven W. Myhre

STEVEN W. MYHRE

Assistant United States Attorney